DOCUMENT RESUME

ED 105 662 EA 007 113

AUTHOR	Dudra, Michael, Ed.
TITLE	Collective Negotiations in Education--Progress and Prospects--A Symposium (7th, St. Francis College, November 8, 1974).
INSTITUTION	Saint Francis Coll., Loretto, Pa. Graduate Program in Industrial Relations.
PUB DATE	8 Nov 74
NOTE	45p.; Not available in hard copy due to marginal legibility of original document
AVAILABLE FROM	Graduate Program in Industrial Relations, Saint Francis College, Loretto, Pennsylvania 15940 ($2.00)
EDRS PRICE	MF-$0.76 HC Not Available from EDRS. PLUS POSTAGE
DESCRIPTORS	*Board of Education Role; *Collective Bargaining; *Collective Negotiation; Conflict Resolution; Elementary Secondary Education; Employer Employee Relationship; Higher Education; Industrial Relations; *State Legislation; *Teacher Role
IDENTIFIERS	Pennsylvania; *Pennsylvania Public Employee Relations Act

ABSTRACT

This booklet contains six short papers prepared for a symposium on collective negotiation in education. The opening paper presents a national overview of the subject, while the subsequent articles mainly discuss experiences under the Pennsylvania Public Employee Relations Act of 1970, which granted state and local employees full collective bargaining rights and a qualified right to strike. Papers included in the booklet are "Collective Negotiations in Education--an Overview," by Richard V. Solano; "Collective Negotiations in Higher Education and the Employer," by David W. Hornbeck; "Collective Negotiations in Higher Education and the Faculty Status," by William G. Pettibon; "Negotiability Issues in Public Education," by John J. Dillon; "The School Boards and Collective Negotiations," by Fred M. Heddinger; and "Collective Negotiations and the Teacher Status," by Robert E. Phelps. (Author/JG)

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COLLECTIVE NEGOTIATIONS IN EDUCATION

— Progress and Prospects —

A Symposium

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November 8, 1974

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CONTENTS

Preface

COLLECTIVE NEGOTIATIONS IN EDUCATION — AN OVERVIEW
Richard V. Solano

COLLECTIVE NEGOTIATIONS IN HIGHER EDUCATION AND THE EMPLOYER
David W. Hornbeck

COLLECTIVE NEGOTIATIONS IN HIGHER EDUCATION AND THE FACULTY STATUS
William G. Pettibon

NEGOTIABILITY ISSUES IN PUBLIC EDUCATION
John J. Dillon

THE SCHOOL BOARDS AND COLLECTIVE NEGOTIATIONS
Fred M. Heddinger

COLLECTIVE NEGOTIATIONS AND THE TEACHER STATUS
Robert E. Phelps

PREFACE

The seventh annual symposium sponsored by the Graduate Program in Industrial Relations at St. Francis College of Pennsylvania was devoted to the emerging phenomenon of collective negotiations in education.

The opening paper presents a national overview of various aspects of collective negotiations in education, while the following speakers analyze the subject matter mainly from the standpoint of experiences under the Pennsylvania Public Employee Relations Act of 1970 — which granted the state and local employees full collective bargaining rights and a qualified right to strike. In both public and higher education, the issues are discussed from the general viewpoint as well as from the standpoint of management and labor.

The editor of these proceedings wishes to express his sincere thanks to the symposium cosponsors and to the speakers and panelists. Particular thanks are also due to Mr. Robert L. Gaylor, Chief of the Division of Labor Relations, Pennsylvania Department of Education, who served as the symposium co-coordinator, and to his able assistant, Mr. Daniel J. DiLucchio.

Michael Dudra

COLLECTIVE NEGOTIATIONS IN EDUCATION - AN OVERVIEW

Richard V. Solano

Chief, Division of Public Employee Labor Relations
U. S. Department of Labor

These days much is happening in government labor relations. I note this at the onset to ease your minds regarding your own concerns in the education sector. If it's any consolation, a sweep around the country this morning would undoubtedly turn up meetings like ours, involving city managers, mayors, personnel directors, police and fire groups — in short, just about everyone claiming elective office or an occupational specialty in government employment. We in the Division of Public Employee Labor Relations can vouch for some of this activity from personal involvement in training and talking with such groups. And our business is booming.

Now that you all feel better, permit me to review some of the principal and special concerns that we see emerging in your area of work. Let's see if you agree.

Of major concern are pressures resulting from inflation, which is pushing up salaries and the costs of conducting school business. Other concerns may be signs of changing times. These include growing teacher pressures for a bigger role in policy formulation. There's also a greater emphasis on teacher professionalism, and greater involvement in the details of operating classrooms.

Stated another way, a survey of the major terms in recent settlements and those issues that led to strikes in San Francisco, Kansas, Detroit, and Baltimore, indicate that the current economic situation has hurt teachers and their families. It may have accounted, in part, for the drastic decisions to strike. For example, a recent Chicago settlement reached 4½ hours before a strike deadline, provided pay raises ranging from 4 to 10.3 percent. The union had originally asked for an 11.3 percent boost in total payroll. Meanwhile the increasing cost of living has totaled about 12 percent during the past year.

It was also evident from the survey that the settlements strained already tight resources available to school development and management programs.

Beyond the foregoing strike actions, it is also worth noting that teachers are acting out of what they consider to be professional concerns. In addition to striving for adequate raises, cost of living clauses, and other economic fringes, they are achieving a voice on policies covering class size, planning time, transfer policies, tenure and promotional procedures — all in the course of regular negotiations. Increasingly, teacher negotiations are also dealing with curriculum development, budgetary distribution of program funds, special reading programs, and other quality of education factors — all of which tend to expand the economic and professional bases of the scope of bargaining. A footnote to this is a recent decision of the Wisconsin Employment Relations Commission which held that public school boards **must** bargain with teacher associations when educational policies have an impact on teaching loads and salaries.

Bargaining on education policy is but one of several trends that has emerged in 1974. Certainly the negative employment situation for teachers, highlighted by decreasing enrollments, looms as an important issue for teacher unions. In fact, the American Fedration of Teachers (AFT) President, Albert Shanker, has cited rising unemployment among teachers as reaching a crisis level — after the effects of inflation on teacher pay. According to the AFT and the National Education Association (NEA) only 40 percent of the 300,000 1973-1974 college teaching graduates found jobs in their field. One of the strike demands in a recent settlement in Oakland, California, was the reinstatement of 104 elementary school, probationary teachers recently laid off. After a one-day strike 93 of the 104 were rehired.

Whether caused by increased teacher bargaining rights, inflation and rising pay expectations, or because of uncertain job security — the fact is that unionization among teachers is on the increase. Organizing activity is especially high in the post-secondary schools and universities. Among strong organizing efforts are those of the AFT, NEA and the Association of American University Professors (AAUP). Again, the reasons may stem from varied sources including new legislated bargaining rights.

As of July 1974, 20 states had some form of policy governing bargaining among community college faculty. Most of these laws have been passed since 1965.

In addition, 27 of the 50 states have legislation covering collective bargaining rights for public school teachers. Lest you be misled, however, among those States with laws a few only provide for meet and confer activity, and the formal procedures and rights vary considerably among state laws.

Other reasons that may account for increased unionization among teachers, according to the reporting service literature, are frustration over a lack of participation in academic governance and eroding tenure systems hastened by the use of part-timers, equal employment opportunity program considerations, and the decreasing employment of professors. Coincidentally, the AFT reports that of its approximately 25,000 members in colleges and universities, 9,000 are new members added during the 1973-1974 academic year.

I'll permit myself an editorial comment and say that without question the traditional opposition to unionism is fading at all levels in the education field. Membership in both the NEA and AFT has increased notably. Figures for 1974 show the NEA with approximately 1.5 million members, up from 1.16 million in 1972. Membership in AFT went from 250,000 in 1972 to its current membership of 450,000. Of course, some of these gains have resulted from recent state association mergers of the respective groups in New York, Florida and elsewhere.

The level of strike activity also represents something of a trend. In the month of September, 1974, the number of strikes was approximately the same as had occurred in September, 1973 — totaling 23 strikes in six states, affecting some 17,000 teachers. However, strikes and job actions for the first 9 months of 1974 have totaled 66, as compared with 104 during the same period in 1973. Whether the reduced strike activity will continue bears close watching. Either the downturn in teacher employment will dampen strikes, or the cost of living may force them up. So far strikes are down.

In this connection, it may be proper for policy makers to question — in light of teacher militancy — whether a strike prohibition or the threat of a fine really keeps teaching staff on the job. In this vein, two recent incidents come to mind. In the Detroit teacher strike, a contempt fine of $240,000 against the Detroit Federation of Teachers was overturned. You may also recall the reduced penalty ultimately levied in the Philadelphia teacher's strike. The lessons here appear to be that teachers did strike despite a strike prohibition in the former, and against a court order injunction in the latter. Also, the decisions may be indicative — and only that — of a changing court attitude against severe penalties for public employee strikes.

Of interest too, are the merger talks between the NEA and AFT. These were discontinued last March and have entered what many call a "cooling off period." I suspect that the talks are dormant but not dead. With Mr. Shanker's election as head of the AFT, the talks may well reopen in the future. First however, the NEA opposition to AFL-CIO affiliation and difference between the Associations on minority group representation on the proposed governing board, will have to be resolved.

Postponed talks notwithstanding, the Associations have expanded their organizing drives. The formation of the AFL-CIO's new public employee department will likely increase teacher organization and lobbying muscle. As a member of the Department, the AFT is assured a governing voice in the Department's deliberations. The NEA, on the other hand, is coordinating its organizing and lobbying efforts through the Coalition of American Public Employees (CAPE). It is joined in its efforts by the American Federation of State, County and Municipal Employees, the National Treasury Employees' Union, and some 13 State CAPE affiliates.

Otherwise, recent organizing campaigns mounted by the Associations are continuing in the eastern seaboard states and in the South. Both Associations are also looking to the adoption of a new California collective bargaining law for teachers to increase their memberships.

In the midst of these changing attitudes and bargaining issues, the AFT, NEA and other public sector unions are also lobbying hard for the passage of a Federal law that would guarantee collective bargaining rights for all public employees, including teachers. Significant differences exist in the separate legislation supported by the Associations. Both groups, however, agree that the situation in the 50 states is too varied in terms of rights and obligations on fundamental collective bargaining issuses and that, consequently, the divergencies call for federal legislation.

In this regard, both the House and Senate have completed hearings on several major bills which would prescribe a significant federal role in public sector labor relations in state and local government.

Again, there are significant differences in the proposed legislation. For example, H.R. 8677 (S. 3215) sponsored by Congressman Clay and supported by the NEA, AFSCME and other CAPE members, would create a federal agency —

the National Public Employment Relations Commission — to serve a somewhat similar function with respect to state and local employees and unions, as the National Labor Relations Board (NLRB) provides in the private sector. The Commission would also be empowered to determine bargaining units and oversee impasse and grievance procedures. Significantly, the bill would make the agency shop fee mandatory for certified representatives and allow negotiations over union shop provisions. The FMCS would assist in impasse resolution. The same bill would also allow those states to opt-out if the commission determines that the state system is substantially equivalent to the system established by the Act.

A similarly extensive federal role is embodied in Representative Thompson's Bill H.R. 9730 (S. 3294), supported by the AFT. This bill would eliminate the state and local exemption from the National Labor Relations Act.

Other legislative proposals not yet subjected to congressional debate, contemplate a much less extensive federal role. For example, the bill supported by the Assembly of Governmental Employees (AGE) requires the states to set up a public personnel system — applicable also to localities within the state. Standards for labor relations systems are also specified in the Act. Compliance is made a condition for the granting of federal funds to the states. A National Public Employee Relations Commission would also be established to enforce compliance with the Act.

In the recent Senate testimony on proposed federal legislation, AFT President Shanker supported the NLRA amendment because he said it is consistent with the AFT's fundamental belief that "the interest, concerns, and problems public employees have with respect to their jobs are in no basic way different from the interest, concern and problems of private sector workers." He went on to state that "in no uncertain terms, the AFT considers the right to strike to be an absolutely basic element in any system of labor relations . . . when the right to withhold labor is limited, then the word bargaining loses its meaning because the power of employees is dissipated."

The AFT has opposed the Clay Bill in part for its inclusion of supervisors in the same bargaining unit as teachers.

Incidentally, the unit determination question, as you may well agree, is a very difficult problem in the education field. I suspect that as today's program continues this issue involving the inclusion of professionals and paraprofessionals in units and the place of substitutes in the negotiation process will be examined. They certainly complicate prospective federal legislative alternatives.

Referring back to the Congressional hearings — the NEA represented by President James A. Harris supported the Clay Bill as part of the COPE program. He noted that "there is no chance for successful bargaining when the employer can back the employee organization against the wall." He stated that both employee organizations and employers must have an equal range of alternatives if agreements are to be reached at the bargaining table."

Whatever approach is ultimately agreed upon, the effects of a federal law — certainly one with a local opt-out or minimum standards — will not cause compliance problems here in Pennsylvania. This State boasts one of the most sophisticated bargaining laws of all the states and would certainly meet such standards.

Clearly, the push for more legislative collective bargaining rights in public sector labor relations is continuing. In the last two years alone comprehensive bargaining laws were passed in Montana, Oregon, Iowa and Florida, and in Indiana for teachers. This brings the total of states having some form of legislation or policy for labor relations to 36.

The implications of new amendments to existing state laws, court decisions, proposed state bills that were rejected, and plans for upcoming legislative sessions could all constitute separate seminars in themselves. But the points I wish to emphasize and conclude with are these:

1. Public employees and their organizations are demanding more rights and getting more legislative support behind their collective bargaining efforts — on both the state and federal levels.

2. Sophistication under existing collective bargaining programs is growing rapidly and pressures for expanded scope of bargaining including educational quality demands are being felt throughout the country.

3. Effective collective bargaining under a state or local law or a federal bill requires continuing adjustment of procedures and policies established therein. In short, there is a need for more discussion and reflection by practitioners on both sides of the table — along the lines of today's program. There is also a need for the transmittal of this experience to the framers of new and amended legislation.

4. Demands at the bargaining table for higher wage rates and cost of living clauses to hedge against inflation will continue to increase.

5. Organizing efforts among teachers will continue to grow and expand geographically for both public school teachers and educators in the post-secondary colleges and universities.

6. Finally, should a merger between the AFT and NEA develop, we will likely see emerge a lobbying force and spokesmen for teachers comparable in strength to the largest industrial unions in the private sector.

COLLECTIVE NEGOTIATIONS IN HIGHER EDUCATION AND THE EMPLOYER

David W. Hornbeck

Executive Deputy Secretary
Pennsylvania Department of Education

Your program and mine indicates that I am to address myself to the question of collective bargaining in higher education from the point of view of the employer. I am delighted to do so as I consider this issue among the two or three most important facing higher education today. To help set the parameters, I should tell you that I speak from experience from the point of view of only one employer, the Commonwealth of Pennsylvania, and within the Commonwealth, the Department of Education. My task this morning is to share with you my experience of having spent three years dealing with one contract and the beginning stages of a second with the faculty of Pennsylvania's 13 State Colleges and Indiana University.

When Secretary of Education, John Pittinger, and I came into office in January of 1972, negotiations between the Commonwealth and the Association of Pa. State College and University Faculties had been underway for a number of months and were within weeks of conclusion. Neither of us were experienced in the labor relations arena; we assumed, partly through decision by indecision, that we should not intervene in the negotiations process in any substantial way since the process was in the hands of labor relations professionals. Moreover, we were of the view that collective bargaining should be limited largely to concerns focusing primarily on wages and conditions of employment defined very narrowly. Educational matters should be excluded.

For nearly a year following the signing of that contract, we pursued the same general approach to the collective bargaining relationship. We took what the lawyers might call a strict constructionist view of the contract. By that I mean that if an issue was not directly discussed in the contract there was no reason to discuss it. It meant that if any basis could be found in the contract for denying the claims of the union, we asserted that basis and denied those claims. It meant that if the contract didn't say that something could or should be done, it was not done. As a matter of fact, neither the Secretary nor I had much contact with APSCUF at all. I think that it's fair to say that our own way of looking at the world also rubbed off on some of those who were responsible for dealing with the faculty at the local institutional level. A combination of our taking that position and others following suit had, as I look back, negative and very unfortunate consequences.

One of the clearest examples of that philosophy of a collective bargaining relationship was our reaction to grievances. I overstate it to some extent, but not greatly, when I say that in that first year when grievances reached the appeal level involving the Secretary's Office, we reviewed the materials submitted in a somewhat cursory way but in fact supported the decision of the president of the local institution. It is quite proper, even necessary to support your managers.

However, to blindly follow their lead can have serious consequences. It was the grievance procedure and its results which first led us to begin to reconsider our position. Toward the end of the first year, we found ourselves with a string of arbitration awards -- seven if I remember correctly — all of which were against us. To understate it somewhat we thought those circumstances suggested a review of the way in which we were approaching labor relations. The culmination of that review, at least up until the present time, is I believe represented in the second contract which we signed with APSCUF during the first week of October..

I want to spend the next several minutes describing the process leading to and the content of that contract. That will illustrate concretely the perspective on collective bargaining of one higher education employer more clearly than simply laying out for you a list of principles to remember. The first and most crucial decision was that — in contrast to the first negotiations — we would be involved at the highest levels of the department. We knew the second contract was going to be a critically important factor in the life of the State Colleges and Indiana University. Having discovered the impact and potential impact of collective bargaining on the colleges, it could not be left to the direction of persons whose primary concern was not education. We felt that it was vitally important that the chief negotiator for the commonwealth be someone who had had not only extensive experience in labor relations and as a negotiator but equally and, perhaps more important, we felt that the chief negotiator had to be someone who understood the world of higher education and could speak the language of administrators and faculty alike. We were fortunate in finding such a person in Dr. Bernard Ingster. The choice of Dr. Ingster represented a significant departure from previous commonwealth practice in negotiations in that the Department responsible for the employes involved in the negotiations selected the chief negotiator. The Governor's Office of Labor Relations was most cooper tive and supportive in that decision.

The next major undertaking was the formation of something that we refer to as the labor policy committee. This was a committee which I chaired on behalf of the Secretary. Dr. Ingster, several people from our office of higher education and a representative from the Board of Presidents of the State Colleges composed the committee. That committee began to meet in early September, some five months prior to the first formal negotiating session. Stated simply, if we were going to take this collective bargaining relationship seriously we were going to be prepared. During the course of those five months, we solicited and received the advice of all 14 presidents, people within the Department, the opinion of people concerned with affirmative action, and others. We then spent days wrestling with the old contract. We considered proposed changes. We discussed our vision for the state colleges and how the contract might relate to that. We argued. We wrote position papers. We did a statistical analysis of faculty ranks, wages, terms and conditions of employment in a host of institutions in neighboring states similar to our 14 institutions. The result was a complete proposed contract representing the best thinking of which we were capable. It was that proposal which we placed on the table at the first formal negotiating session in January.

At the first session, the Commonwealth team and APSCUF's team decided to try to reduce the adversarial nature of the relationship to a minimum. We began by calling the negotiations conversations. Frankly, that kind of dialogue

was possible because during the time the Commonwealth had been preparing so arduously, APSCUF also had been taking its responsibility seriously. We found from the beginning that the Commonwealth and the faculty were coming together with a wide range of shared concerns. These revolved around issues of teaching excellence, rising costs, quality institutions and the future of the state colleges. That common ground sustained both parties throughout the negotiations and allowed us to conclude them on the last day of August without the intervention of a third party of any form — no mean achievement in itself.

That contract reflects throughout those common concerns. It faces issues of economic reality. It addresses itself specifically to issues of teaching excellence. It involves a considerable measure of faculty participation in helping shape thinking leading to decisions. Let me describe for you the basis for my making those assertions.

First, economic reality is addressed in two major provisions. One of those is the wage package for the first year which calls for a 4 per cent across the board increase in salary. We all, of course, know that in these inflationary times such an increase is hardly extravagant. But it is a tribute to the faculty that they considered such a settlement during a period of financial crunch in the institutions, an investment in the future of the state colleges. On the other side, economic reality was further addressed by the Commonwealth's pledge to retrench no faculty member for the acadamic year 1975-76. That extended by one year our pledge of a year ago to a no-retrenchment policy for the academic year we are presently in. We felt that it was very important that faculty should be secure in their jobs during this period of time in which faculty, and administrations of the colleges and the Department of Education are taking many new initiatives related to the quality of education and teaching excellence in our institutions.

To the same end, we left determination of wages in years subsequent to the first to a rather unusual mechanism in the event that the Commonwealth and APSCUF are unable to agree to a wage package. The issue would be submitted to an arbitration panel. The panel would make a final decision subject to a ceiling that will be determined by the wage settlements between the Commonwealth and the other unions representing Commonwealth employes. We decided to employ that mechanism for wage determinations in order to avoid having serious disagreements over wages influence and possibly destroy our mutual interests in giving primary attention to educational issues.

Let me turn now to provisions of the contract which relate directly to questions of teaching excellence and educational quality. These are at least four areas of the contract that deal directly with these questions. For me the first and in some ways the most important is one dealing with evaluation. A committee made up of two presidents of the state colleges, two faculty representatives and two appointees of the Secretary are presently at work designing the implementation of the new evaluation procedures. The parameters of the substance and process for the new approach to evaluation, however, have already been laid out in the contract itself. They consist of several factors. One is that the new evaluation procedure will take place for any given faculty member once every five years. That by itself sets the stage for the evaluation to be taken more seriously and in

greater depth than in the past. Second, there is a heavy emphasis on self evaluation. Self-evaluation will be conducted primarily through the faculty member writing a paper in each of four areas. One will speak to the faculty member's views of teaching and goals for the next five years. A second will relate to an assessment of intellectual growth and development during the previous five years and plans for the next five. Third will be an assessment and goal setting statement regarding service to the college. Fourth will be a similar statement about the college's obligation of service to the community or region in which it finds itself and the faculty member's role in helping meet that obligation. The committee which is at work is discussing how this will be fleshed out and implemented. We feel very strongly that self evaluation has to play an important role for change and thought to take place regarding any of these issues. It is absolutely essential that the faculty member being evaluated play a dominant role. However, the process will not be left to the faculty member alone. A faculty member's peers, administrators and students will form an evaluation committee which will read the papers written by the faculty member and discuss at length the performance of the faculty member over the previous five years and the projections which the faculty member has made with respect to the subsequent five years. We feel that this kind of attention to evaluation at a substantive level will lead to improved performance even among the best of faculty members, since we begin from the assumption that none of us can legitimately claim that we are so good at what we do that there is no room for improvement.

A second area of the contract relating to teaching excellence is the provision for distinguished teaching awards. In the past at the state colleges one device which was used to reward meritorious performance was something we referred to as merit increments. Over the years the merit increments had, I think most would agree, deteriorated into a process in which a primary consideration was whether a particular faculty member had gotten one the year before or the year before that and whether that faculty member's turn to get one had come up again. The distinction that should have been associated with merit increments was for all intents and purposes not an operative factor. The new distinguished teaching awards will take place at two levels. At the local campus level one, two or three awards may be granted each year depending on the size of the faculty at the campuses. Faculty will submit proposals to a committee made up of faculty from other distinguished teaching institutions, administrators, and students. The proposal will lay out what the faculty member proposes to do by way of demonstrating teaching excellence and will pinpoint the evaluation process the faculty member suggests will reveal whether he or she has done it. When a faculty member is admitted to candidacy for a distinguished teaching award, he or she then will do whatever had been proposed. At the appropriate time the local campus committee will evaluate performance. Some faculty may not have completed what they had proposed. Another group may have completed it and thereby be eligible to receive a certificate of teaching distinction but not the final distinguished teaching award. Finally, one, two or three faculty members, depending on the campus, may receive the teaching award itself which will be worth $2,500.

In addition to the local selection, those receiving the distinguished teaching award may become candidates for one of ten state-wide awards which will be given on the basis of a selection committee at the state level consisting of three Secretarial appointees, a president of a local college, a president of a local APSCUF

chapter, and a president of a local student association. Anyone selected for one of the state-level awards will receive an additional $3,500. A faculty member thus would be eligible to receive a one-time $6,000 award if he or she were successful at both levels. Th cost of this merit award system will be one-third to one-half that of the old system. The difference will be expended on other mutually agreed upon educationally related problems.

We think that this process will focus real attention on teaching excellence. There is one major problem associated with it with which we are struggling now in a committee similar to the one I described that's at work on evaluation. That is how we reward the work and effort of the faculty member whose approach to teaching is not what one would normally call innovative. It is quite possible for the process we have outlined to deteriorate into a gimmicky orientation. We have to guard against that. There are — and you know who they are at your campuses — individuals who over the years have inspired young people in their academic pursuits, who have challenged them to stretch their minds and who have generally been excellent teaching faculty. Our challenge is to provide a way in which those people may become candidates for the distinguished teaching award as well as the faculty member who has some new creative idea for approaching the academic enterprise.

The two other areas of the contract which are very significant are the areas of tenure and promotion. In each there is a committee at work composed of two faculty members, two presidents and two Secretarial appointees who are in the process of developing new guidelines for promotion and tenure decisions. At the moment, too many of those decisions are based on a sense of tradition and past practice. There are some institutions and some departments within some institutions which have written clearly defined standards for both promotion and tenure. In too many others, however, the standards are loose and vague. The state-level committee in the area of promotions will establish guidelines against which local promotion guidelines will be measured. Local promotion decisions will then be made against those guidelines. In area of tenure, the guidelines which the state-level committee will promulgate will be advisory to the presidents rather than mandatory as is the case in the promotion area. However, since those guidelines will result from the joint deliberations of presidents, faculty and the Department of Education, they will carry with them a high degree of persuasiveness.

There are other areas of the contract which are important, such as the provision for a workload equivalent for a director of equal opportunity in sports and a new affirmative action provision. But there is only one other area that I want to highlight this morning. That is the provision for state-level meet and discuss sessions. During the course of negotiations there were a number of items where we carried the language from the first contract over into the second contract or made only minor modifications. Yet they were areas in which both parties recognized continuing complex problems which affect the entire system. They include questions of retrenchment, affirmative action, workload, overload, summer employment and retirement. We resolved to continue to discuss those items and others that will occur of a major policy nature in monthly meet and discuss sessions between APSCUF and the Department. After three session — the latest of which was yesterday — it is clear that we are continuing to approach those problems from the point of view of their being mutual problems to which we must find

answers rather than problems which involve us in a rigid adversarial relationship. That we can continue to sit down and discuss such major questions facing higher education is critically important if our 14 institutions are going to meet the challenges of 1974 and the years to come. That sums up from by perspective the process and content relating to our most recent contract with APSCUF. Both the Union and the Commonwealth have stuck their necks out pretty far in signing that agreement. These past six weeks suggest to me that the risk that's involved will prove to be justified. I can only hope that continues to be the case.

The Department feels that the state colleges have often taken a bum rap with respect to their quality. We feel that each of the 14 can become institutions of real distinction. We think that the institutions can be much more a system than they are now. We think that each institution can and should develop at least one area of such expertise that they achieve a national reputation in that area. We would hope, of course, that there might be more than one. But each should have at least one thing which leads someone in any part of this nation to say that it is necessary to go to Slippery Rock or Clarion or West Chester or Cheyney or whatever in order to be on top of the state of the art in whatever area is each college's area of real distinction. We are going to continue to face difficult problems of rising costs and potentially dropping enrollments. We are going to have to deal with significant new trends in higher education such as those that we see in the arena of continuing education and the need for a substantial increase in the number of minorities that we want to admit as students and employ as faculty and administrators. We must develop ways in which the colleges become less sexist in employment and in the orientation of their acadamic programs. We must provide for differentiated missions to meet students, commonwealth and regional needs. The kinds of initiatives which are implied in that range of objectives are not going to be achieved through fiats from the Department of Education or from the presidents of the institutions. It will require cooperation with the faculty.

I believe collective bargaining can assist in maintaining excellence and provoking change. It can help accommodate initiatives which come from many directions. The contract which I've just described for you and the process through which we went towards its achievement underline my commitment to the positive use of the collective bargaining relationship. To make that so, however, one cannot approach the issues in a cursory or ad hoc manner. A number of things have to be at work.

The process has to involve participation by managers at the highest level. In the instance that we're talking about, the Secretary and I, the Commissioner and the Deputy Commissioner of Higher Education and the presidents of the intitutions have to give time, thought and energy to labor relations.

It is absolutely essential that there be much preparation and planning leading up to any negotiating session as we did in the labor policy committee.

The kind of time and energy that has been given to implementing that agreement must continue during the life of the agreement. One of the serious mistakes that people engaged in labor relations sometimes make is giving little or no attention to the relationships between the employer and the employe between

contract negotiations. That always seems to lead to a new set of negotiations in which there are so many as 200 or 300 or 400 outstanding problems which in turn have to be dealt with at the bargaining table. Most of those issues could be solved prior to the time that a new contract needs to be negotiated.

That leads me to the principle of flexibility. A contract is a contract is a contract. At the same time, if either the union or the empolyer views the contract in an absolutely rigid way, solutions to many problems will not be forthcoming. There is one view to the collective bargaining relationship which reflects the view that the Secretary and I originally took which reads the contract in the narrowest fashion possible. There are problems that arise in any contract which were not foreseen by those at the table when the contract was negotiated. I think that it is essential that the parties be in a position to sit down and talk to one another and arrive at reasonable solutions to the complex problems that face us all. In the course of doing that, the manager need not give up what some hang on to in a somewhat reilgious way - - that entity called management rights. In fact, reasonable solutions to complicated problems represent in my view the exercise of management rights. By and large, I view the collective bargaining process as a process that can and should be devoted to problems solving. I am sure we all would agree that the problems facing higher education today are as difficult as they have ever been. Rigidity and narrowmindness have no place in that kind of world.

Finally, if we are to justify participation by people at the highest level; if we are going to prepare and plan extensively; if we are going to approach collective bargaining as a problem-solving process and be flexible, there is one other necessary ingredient. We must view the faculty as partners in this enterprise. We should embrace the concept of participation, not fear it. We should do everything in our power to provoke trust rather than distrust. Until such time as the faculty are viewed as allies and, following from that, respond as allies, we will not have the kind of relationship which will result in the achievement of the goals we mutually hold. That kind of partnership is a two-way street. In any human endeavor, where there are vested interests and strong opinions held, the development of a trust relationship is an arduously difficult task. Both sides have to work at it. Both sides are in the position of having to maintain a position yet be sensitive to the position of the other party. It takes skill, sensitivity and a masterful exercise of the art of compromise in order to achieve the best which is possible out of such partnership. Both sides are going to make mistakes. But if those mistakes constantly lead to the drawing of rigid lines the relationship is in trouble and higher education is in trouble as a result.

One can adopt the rigid narrow view of collective bargaining. Some continue even to play like it doesn't exist. You can embrace the strict constructionist perspective of a contract. You can limit discussion at the table to wages and traditional trade unionist view of hours and conditions of employment, and maybe in another six months or a year or two or three I will come back to you and urge you to take such a view. But I have put my bet on another approach. I'm betting that the good will of employer and employe alike can use the relatively new collective bargaining relationship to solve problems in higher education. I'm betting it can help improve the quality of education and provoke better teaching. I think it can help lead to retraining rather than retrechment of faculty members to meet

needs that regions of the Commonwealth and the Commonwealth as a whole present to the world of higher education daily. The collective bergaining relationship can assist in the design of programs which meet the needs of minorities and women. The relationship can support the concepts of differentiated missions within a system of institutions that are marked by distinction. The risk is great; the stakes are high. But if we and APSCUF succeed, the Commonwealth and the students of this Commonwealth will be the winners and that, when all is said and done, is which I hope we are about.

COLLECTIVE NEGOTIATIONS IN HIGHER EDUCATION AND THE FACULTY STATUS

William G. Pettibon

Director of Higher Education
Pennsylvania State Education Association

The enterprise of Higher Education has perceptively moved from the "Soaring '60s" to the "Sinking '70s." This state of adjustment and insecurity is being reported on many fronts and by a variety of spokesmen, but nowhere within the enterprise of Higher Education is the impact of this change being noted with more misgivings than within the ranks of the faculty.

These misgivings are being felt throughout the professorate and without respect to the type of institution in which one is teaching, be it two-year, four-year, or graduate; be it public or private; be it secular or sacred. None of these institutions is providing the security formerly envisioned by the faculty in reaching to current crises in a way that projects confidence for the future.

Donald McDonald, in a recent publication of THE CENTER MAGAZINE, having written an article about the Carnegie Commission Study of Higher Education, reports a noted American educator's comments with respect to the faculty.

"If you make recommendations that can be put into effect by the federal government or by the state government or by the trustees or by the college and university presidents, you can get some place. If you make recommendations that require faculty action, you will not get any results; don't waste your time."

If this were an isolated voice crying in the wilderness, the faculty's problems would seem to be overblown. In reality, this kind of comment is being echoed in many areas of society - - the public, the government, the student, and even within the faculty ranks themselves. It would appear that the faculty are principally being blamed for all the ills of higher education now presumably being suffered. An examination of the causes for this may be in order, but here we will direct our attention to some results of such an attitude.

In CHANGE magazine, Charles E. Cox, in "Tenure on Trial in Virginia," points out that Virginia scored a first in the nation when a State Board for Community Colleges secretly axed tenure for the seven-year-old system's 1,700 teachers. It was reported that this action was covert both in its creation and in its implementation with the strong suspicion that the Board's action was motivated by legislative conservatives who could extract their pound of flesh from a politically attuned Board.

All of this certainly offers no shade of security for faculty subjected to this kind of decision-making. In these days of equal employment obligations on the part of institutions, many of them are citing tenure as the inhibitor precluding moving away from the overwhelming dominance of white and male professors. Whether this in reality is true has not been examined.

In the Virginia situation, the Chancellor feels secure in that he has ten applicants for every job opening. The Vice-Chancellor has stated that "While we will make more changes in the new policy, we will not go back to tenure. We do not feel it is necessary."

But tenure does not constitute the principal part of this issue of insecurity; it is only typical of situations in which faculties find themselves in this new and changed environment in higher education.

An article by Helmut Golatz in THE EDUCATIONAL FORUM, "The Restive Faculty," develops a rationale for problems the facutly faces, as well as some subsequent theories that call for action on the part of the faculty. Golatz states that competition between forces for unity and for diversity within the institutions of higher education has suddenly focused on the central issue of governance: on what authority structure can the increasingly complex academic organization be legitimately founded? By what system of sanctions can it best be directed? By what measures of accountability can it be controlled?

He suggests that while at one time faculties were urged by their administrators to participate in shared decision-making, now the aggressive faculties are asking for pieces of this responsibility rather than waiting for shares to be offered.

Golatz cites findings of a special task force of the American Association of Higher Education:

> The main source of discontent are the faculty's desire to participate in the determination of those policies that affect its professional status and performance and in the establishment of complex state-wide systems of higher education that have decreased local control over important campus issues.

It is suggested by this and other reports that the very elements which included success for higher education and the faculties as experienced during the sixties have been the seed beds for the insecurities that are now being felt:. large enrollments, large funds, and large expectations, without corresponding measures by which these elements can be evaluated with respect to competing demands in the society at large. Golatz, article concludes with these thoughts:

> Faculty participation is apparently an idea whose time has come. The only question that remains is what form that participation will take in a given institutional setting.

The final sentence:

> It's the same old ball park; but in it administrators and faculty are making the rules for a new game of employment relationships.

Continuing the theme of the need for an altered faculty role, Joseph Dement, writing in the PEABODY JOURNAL OF EDUCATION, reports on his own experience at Oakland University in Michigan.

In "Collective Bargaining: A New Myth and Ritual for Academe," he describes the change from traditional faculty participation to one in which collective bargaining prescribes faculty involvement in the affairs of the institution.

Recounting the faculty discovery that they had no impact in determination of broad university policy, he described their attempts through reports and conferences to appraise the administration of the situation and obtain remedy.

"We found," he stressed, "a vast willingness to listen together with a vast unwillingness to act."

The realization that faculty was the victim of power rather than a wielder of power brought the Oakland professors to collective bargaining for, as Dement asserts, "Make no mistake about it, collective bargaining means the acquisition of power, the use of power, and the threat of power."

His entire philisophy may easily be inferred from this statement:

> An unwillingness to use power breeds disrespect in those who are willing to use it; hence, I am convinced, the condescending patronage with which most faculties are treated by their administrations. While our relationship may not be marked by love or even, in some cases, friendship, it is certainly marked by respect, the mutual respect which one adult has for another.

Demonstrating that similar conclusions may be reached by individuals with disparate sets of values and persuasions, Milton Mayer, in THE CENTER MAGAZINE, deals with the question of faculty unionism forthrightly in his article "The Union and the University - - Organizing the Ruins."

A journalist before becoming a professor, Mayer describes his self-perception early in his journalistic career: he considered himself a professional while his publisher regarded him as a tradesman. But now, he relates, he has a clearer perception and no illusions about his professional status being anything more than that of a tradesman. Admittedly his principal interests are wages, hours, and working conditions.

In developing a rationale for his acceptance of unionism and collective bargaining as a positive step for the faculty, he asserts:

> Thus the unity of the university, long ago shattered by secularization and specialization, is being restored, not, to be sure, in the interest of intellectual love of God but in the interest of temporal security (and bodily security at that). The same interests that disunite society, namely, wages, hours, and working conditions, unite it when it is under perceptible attack by a common enemy . . . .

Realizing that the iconoclasts of academe indeed make strange but necessary bedfellows, he emphasizes their basic commonality:

> As professors they once professed something beyond wages, hours,

and working conditions. They professed the advancement of knowledge and its dissemination among young men and women who were determined to learn. As professors in a university they professed a universum whose last end (therefore its first principle) was peace. To achieve unity now, they have only to stop professing their profession, recognize the naked condition of their existence, and unite and fight.

What does this plethora of related essays have to do with those of us in the enterprise of higher education?

First, it would appear that we, too, are subject to the maladies professed by collegues in widespread location. As an example, recent struggles in the General Assembly (Pennsylvania) relative to appropriations for various institutions of higher education supported by the Commonwealth is being debated not on logic but on emotion in terms of political advantange.

In fact, the total impact of government's role in higher education in this state is being felt more keenly than ever before. Testimony given by the Commonwealth in certain PLRB hearings relative to unit determination has precisely described the state as employer for faculties who had fixed assumptions previously that they worked for a university. It would be superfluous to point out that dealing with the public as employer ranks a world apart from dealing with a college administration.

Additionally, various state-related universities, along with their appropriations recently, felt the weight of government in terms of requirements to report conditions of their employment, for purposes of hard data to be used as criteria for their accountability, under what was then referred to as the Snyder Amendment. Similar amendments have been attached to subsequent appropriations legislation.

The preceding attempt at partial analysis of the dislocations which faculties are increasingly feeling in no way comprises an evaluation or judgment of the responsible role of government in the enterprise of higher education. Rather, our objective is to reemphasize to professors that through no action or desire of their own they are faced with a changed world.

The winds of social forces which favored them in the '60s have become the ill winds of the '70s. Their product was in short supply then and so they were catered to; now it is overabundant and their value is down.

The day when the isolated professor could talk over his needs and wishes with the friendly dean and sit back to await an easily won resolution has gone along with the Studebaker. Realists have perceived that today faculties are receiving the last crumbs from the table after service personnel organizations and the ambitions of the institution have devoured the entree.

With the elevation of the decision-making level from the familiar halls of the institution to the wide-open political forum of government, a congruent rise in the faculty's mode of accommodating to the seat of power offers the only reasonable expectation.

Pennsylvania's Act 195 can provide that mode, but it does not force acceptance and it does not guarantee success. The energizing force must be the initiative of the establishment in utilizing the avenue open to it.

That initiative will prevail only when the main body of the faculty - - conservative, traditionalist, racial, reactionary, liberal, or whatever - - realizes that the name of the game today is power, that only an organized unity offers that power, and that his participation will not soil his Mortarboard, erode his intellectuality, or label him a social misfit.

In fact, it may help to maintain his self-respect and professional integrity in the face of an ever-changing, seemingly compromising society. . . .

Collective bargaining in higher education is now still very much in a formative stage. The state of higher education as an entity moving through the '70s will be influenced by collective bargaining. Often, those attempting to assess bargaining's impact on higher education look to precedent or practice in either the private or public sectors other than education. Often these assessments are a reaction and sometimes negative. It needs to be asserted at this time that the experience of collective bergaining in higher education is such that the outcome is still plastic and will be ultimately determined by the participants, not the outside. This places a supreme responsibility on the participants, be they representative of the faculty or the institution, to make and mold the outcome of this process to one that all parties choose, which of itself may be good for higher education. Time will determine how the parties accept and discharge this responsibility.

Extending this thought about the current plasticity of bargaining in higher education, much of the literature is asserting that collective bargaining is an adversary process. "Adversary" as a word, noun, or adjective, has a negative connotation; looked at in terms of its broadest connotation, though, adversary actually connotes two parties attempting to accommodate different perceptions with respect to any condition or proposition. In this context, it may not be improper to describe all bargaining as adversary, but what has taken place on most campuses heretofore may have been better described as having always been an adversary relationship. In fact, the only new element added by collective bargaining is balance to the power distributed plus the added weight of law in terms of final decisions. To describe bargaining with respect to its newness of application in higher education as an adversary relationship, implies that this relationship is also new, which is not an implication that can stand much scrutiny. A description of previous mode of operations of campus governance or authority relationship as "shared," is not supported in fact or fiction that the sharing was cooperative; it was rather benevolent and expedient.

Assuming that the adversary relationship or process, either present or prior, can serve to synthesize the different perceptions, as a result of that synthesis a larger and more significant question can be confronted, "Is the mission or continuation of the institution impeded by the relationship established?" The answer is not a plea for collective bargaining or any other social process, but rather an appeal for openness of inquiry and modification rather than emotional reactions

to something new, which reflects poorly on the concept of scholarship as a central theme of the higher education community.

We can conclude then that collective bargaining may be described as a more formalized process and as a result different perceptions of the formalized relationship may vary in different degrees. But bargaining is only an instrument which reflects through its product the sincerity and sophistication of its users rather than predetermines the outcomes of any point or issue. Therefore, the outcome is in the hands of the whole higher education community as reflected through the participants' utilization of this new mode of governance.

NEGOTIABILITY ISSUES IN PUBLIC EDUCATION

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I. Background

Public school teachers, who have traditionally been considered a docile and non-activist segment of our society, have during the past decade shown such an aggressiveness in matters relating to their employment that their commitment to action through organizational procedures is often referred to as "militancy." During the late 1960's and early 1970's teachers have taken significant strides in not only changing their conditions of employment and the benefits which they receive, but also have been able to assume an expanding role in educational decision-making. They have accomplished this through procedures variously referred to as professional negotiations, collective bargaining and collective negotiations.

To achieve their purposes they have invoked such coercive measures as professional sanctions, withholding of services, mass resignations and strikes. In many instances, especially those involving strikes, the action was contrary to then existing law. However, legislation prohibiting such action to public school teachers and other public employes had proved itself unenforceable in a number of states including Pennsylvania. As a result, beginning with Wisconsin in 1959 (later amended in 1961) more than half of the states have enacted some form of legislation granting to teachers either the right to meet and confer or to bargain collectively with boards of education.

Prior to 1970 collective bargaining with the right to strike had been prohibited to school employes in the public schools of Pennsylvania. The legal basis of this prohibition was the Public Employes Anti-Strike Act of 1947, which while prohibiting the right to strike did provide for the establishment of a "grievance panel." Unfortunately, the panel had no way to enforce its recommendations and subsequent appeal procedures were equally powerless if one or both sides decided not to accept or approve the findings.

There was, hovever, nothing in the 1947 law or other statutes which either required school boards to enter into collective negotiations or prevented them from doing so if they so desired.(1) Consequently, many school districts in the Commonwealth during the latter part of the 1960's engaged in a process referred to as "Professional Negotiations," and with varying degrees of formality entered into agreements with their professional staffs. Professional negotiations, a term that entered into the education's lexicon during the late 1950's, has since the passage of Act 195 been more frequently expressed as collective negotiations or more precisely collective bargaining.

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1. Bryan, Herbert E., "Board-Staff Relationship and Professional Negotiations," **PSBA Information Legislative Service**, Vol. V, No. 46. (December 15, 1968), p. 8.

II. Views on the Scope of Bargaining

With the passage of this Act, officially titled **The Public Employe Relations Act,** the subject of negotiations became an extremely important one for teachers, administrators, and school board members. Pennsylvania had joined a growing list of states that had sanctioned by either permissive or mandatory legislation, collective bargaining for teachers and other public employes.

Furthermore, court interpretations of these laws throughout the country have been constantly expanding the scope of such legislation. Each year school officials find themselves bargaining on many more subjects than they did previously as courts have placed more of those subjects under the umbrella phrase "conditions of employment."(2)

The scope of bargaining has also been expanded through negotiations strategies at the bargaining table.

For instance, school board negotiators may now find employe negotiators assuming an unyielding position on items upon which negotiations are mandatory in order that they can gain a concession or an agreement on an item upon which negotiations are not mandatory.

Some well meaning school boards have also expanded the scope of negotiations in their individual districts because of their sincere belief that by so doing, their teachers could and would share a greater responsibility for the quality of education. Perhaps it is this viewpoint that was expressed by one leading educator when he said, "Negotiations can, and should remove every excuse for not doing a good job." (3)

On the other hand, there are those who view negotiations as a "threat to existing powers." A review of the literature indicates that:

> The NEA and AFT generally hold to the position that everything is negotiable. School boards maintain, however, that items are non-negotiable that are clearly ministerial or where the board must exercise its discretionary powers or sovereignty as delegated by the legislature.(4)

For this reason, among others school boards and school officials generally take a narrower and more restricted interpretation of the scope of bargaining.

Since the passage of Pennsylvania's Act 195 as well as similar statutes in other states which either permit or mandate teacher negotiations, the question as to whether teachers do or do not have the right to negotiate is being relegated to the background in many debates relating to collective negotiations. One of the

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2. Seitz, Reynolds C., "School Law: The Trends and the Trials — Teacher Negotiations: the Legal Issues," **Nation's Schools,** Vol. 87, No. 3. (March, 1971) p. 49.
3. Cornell, William A., "Target — PN in Curriculum and Instructional Areas," **Pennsylvania School Journal,** Vol. 119, No. 3. (November, 1970), p. 124.
4. Francis, Samuel N., "Legal Guidelines for Educators . . . . What is Negotiable?" **The Public School Digest,** Vol. 22, No. 1. (1969-1970) School Year) p. 27.

major sources of contention now centers upon the question: "What is negotiable?" Current literature reflects various points of view as to what items are proper subjects for bargaining between school boards and their employe organizations. One prominent Pennsylvania educator and author takes note of this varied viewpoint when he states that:

> The right of teachers to negotiate collectively is rarely challenged today. But negotiate about what? If negotiations were confined exclusively to salaries and welfare benefits, administrators and school boards everywhere would agree that negotiating process deserves full and unconditional support.
>
> However, teachers seek to negotiate about many more issues than merely salaries and welfare benefits . . .(5)

These divergent viewpoints are highlighted in two statements which I would like to read to you. The first is taken from one of the earlier NEA publications on negotiations which states:

> Teachers and other members of the professional staff have an interest in the conditions which attract and retain a superior teaching force, in the in-service training program, in class size, in the selection of textbooks, and in other matters which go far beyond those which would be included in a narrow definition of working conditions. Negotiations should include all matters which affect the quality of the educational system.(6)

The strongly opposing point of view of the National School Boards Association is reflected in the words of its executive director when he says:

> At the very least, education policy must remain free from the vested interests of unreachable professionals—unreachable, because teachers not only are free from public accountability but in many instances they also are sheltered from **management** accountability through tenure laws. Certainly, teachers and other employes should be consulted on matters pertaining to their work, but it is difficult to understand how the educational process can be served by trading off curriculum decisions at a heated bargaining session. Furthermore, if matters of education policy become contract items, the result could have severe effects on the innovation, experimentation, and desirable variations in the teaching-learning process, all of which are so vital to a fulfilling school experience.(7)

The American Association of School Administrators exhorts its membership to caution when it states that:

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5. **IBID.** p. 27.

6. National Education Association, Office of Professional Development and Welfare, **Guidelines for Professional Negotiation,** Revised Edition (Washington: The National Education Association, 1965) pp. 21-22.

7. Webb, Harold V., "The Case for Keeping the Federal Government out of Board-Teacher Negotiations," **The American School Board Journal,** Vol. 159, No. 13, July, 1972, p. 19.

> Administrators and board members should think very carefully about the possibility that there may be certain management and board rights and prerogatives that should not be relinquished or made the subject of negotiations.(8)

These statements which I have excerpted from the literature so far, represent the diverse viewpoints of national organizations. Let us draw a little closer to home for a few minutes and examine the Pennsylvania scene.

First, Section 701 of Act 195, the Pennsylvania Employe Relations Act, defines the scope of bargaining as "wages, hours, and other terms and conditions of employment." Section 702 of the same statute further enumerates those areas in which collective bargaining shall not be required of the public employer when it states:

> Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of service, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel.

The Pennsylvania School Boards Association calls this section of the Act,

> . . . one of the most critical areas of the collective bargaining law. This section of the law protects the school district from having to bargain over subjects which affect educational opportunities for children that are clearly the responsibility of the employer.(9)

On the other hand a spokesman for the Pennsylvania State Education Association is reported in one of the educational journals as having said:

> The PSEA takes the position that this narrow view of what is negotiable under the Act cannot be supported by the facts and that the wording of Section 702 does not in the least foreclose admitting to negotiations any considerations, whatever, which affect a teacher's practice of his profession . . . (10)

The position of the Pennsylvania Federation of Teachers is equally broad in its interpretation of what is negotiable under the terms of the law with one of its spokesmen stating that: "Teachers and the Federation hold that virtually all items are negotiable."(11)

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8. American Association of School Administrators, **The School Administrator and Negotiation** (Washington, D. C.: the Association, 1968) p. 51.
9. Pennsylvania School Boards Association, **Act. 195** (Harrisburg: Pennsylvania School Boards Association, Inc., 1971) p. 54.
10. Lauterbach, Herbert F., "Act 195 Four Points of View — Its Impacts on School Control and on Professional Development of Faculties," **The Public School Digest**, Vol. 23, No. 2 (1970-1971 School Year) p. 12.
11. Fondy, Albert, "Act 195 Four Points of View — A Brief Discussion of Pennsylvania's New Public Employee Bargaining Act," **The Public School Digest**, Vol. 23, No. 2 (1970-1971 School Year), p. 2.

III. A SUMMARY OF THE RESEARCH

So far in this presentation, in a somewhat abbreviated form, I have endeavored to present as fairly as possible the issues of negotiability as they are reflected in the statements of state and national organizations and as they may be defined in the statute.

Now, let us take a look at what actually happened when school teachers sat down at the bargaining table with school board negotiators.

About a year ago I completed a study which was based upon an analysis of Pennsylvania's early experiences with Act 195 as reflected in the negotiated agreements of a random sample of 217 Pennsylvania public school systems. School districts from every intermediate unit in the state were included in the sample and the percentage of response was 80%.

Neither time nor space nor the indulgence of so patient an audience will permit the detailed reporting of all aspects of that study here this morning. In general, however, it can be fairly noted that although the scope of bargaining was broad and varied, school boards for the most part avoided negotiations on many of the controversial items enumerated in the State College case as "management prerogatives".

On the other hand, however ,teachers did succeed in including within their agreements such a significantly large and varied number of items that it might imply a tendency towards a liberal interpretation of the phrase "other terms and conditions of employment."

Tabular analysis showed that the scope of bargaining included significant percentages of a wide range of specific items in such general classifications as: (a) organizational benefits, (b) employe rights, (c) instructional program, (d) personnel policies and practices, and (e) monetary and welfare benefits.

With only a few exceptions, school boards seemed to resist some of the less direct ways of expanding the scope of their contracts by avoiding the inclusion of past practice clauses, or the inclusion of supplementary documents either directly or through reference.

Although it is not always easily discernable from the substance of the contract, it does appear that the most significant weakness of school board negotiators is that they did not utilize the **quid pro quo** of collective bargaining as effectively as they might. It is suggested here that management personnel instead of viewing collective bargaining as another one of education's unpleasant sidelines, should capitalize upon it as a means of stimulating the more efficient utilization of faculty talent towards instructional improvement and the development of new and innovative ideas and practices. This two-way street to collective bargaining is wasted when its primary utilization is limited to the preservation of the **status quo.** One significant quotation on this point which I must read to you states:

> Negotiations are a give and take process. Neither side can expect continual "taking" without some corresponding "giving."

> Teacher groups must come to realize that the revenue from which the "bread and butter" issues are paid is not a bottomless well. Teacher groups must also come to realize that with increased involvement there must also be a corresponding responsibility.(12)

Does that strong language sound like something you would read in a School Board publication? Actually, it appeared in a 1970 issue of the **Pennsylvania School Journal,** a PSEA publication.

The study which I referred to earlier also included a questionnaire which was directed to the framers of the Public Employe Relations Act as well as employe and employer organizations and other responsible authorities familiar with the legislation and its implementation. The majority of those responding indicated considerable satisfaction with the Act and its implementation. In particular, the language of the Act as it defined the scope of bargaining seemed to meet with general satisfaction. Many of the respondents expressed their feeling that it was not the intent of the Act to be more specific in defining the scope of bargaining. Rather, it was intended to provide a broad definition, the specifics of which would be worked out with time and experience in applying the law. To some extent the instruments which will be employed in working out those specifics will be court interpretations, rulings of the Pennsylvania Labor Relations Board, and emerging patterns of local determination. Perhaps the most notable example of this experience in applying the law is the State College case where the famous twenty-one disputed items of negotiation are still awaiting final determination in the Pennsylvania Supreme Court. The resolution of that case would have profound implications upon the future of collective bargaining in Pennsylvania.

IV. CONCLUSION

If I may be permitted to close on a philosophical note I might say that whatever the outcome of that case, whatever the content of our present agreements, and regardless of the steadfastness of our present positions, it is becoming apparent to many that the face of education is rapidly changing. Like all the evolutionary changes around us, it is on the move. Our interaction with one another may alter its direction but not its monentum. It is caught up in the greater swirl of social change we see around us. People everywhere are clamoring to be involved in all those things that affect their lives. Teachers, students, and parents want a piece of the decision-making action. And school boards and administrators who cannot or will not adapt to the change may find that their tenure in office will be short and uncomfortable. Teacher associations also who, in the face of rising educational expenditures, abuse their new found power and ignore a citizenry clamoring for quality and accountability may find themselves shackeled with new restraints. As one author has stated: "The great leavening influence in all of this will be that source of power and wisdom that transcends us all, the power of public opinion."(13)

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12. Solt, Elbert S., "Perspectives on Negotiations," **Pennsylvania School Journal,** Vol. 119, Number 3 (November, 1970) p. 127.

13. Wynn, Richard, "Collective Bargaining," **Phi Delta Kappan,** Vol. 49, (April, 1970) pp. 415-419.

THE SCHOOL BOARDS AND COLLECTIVE NEGOTIATIONS

Fred M. Heddinger

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After more than four years working under the Pennsylvania Public Employes Relations Act — Act 195 — it is probably a good place to begin our discussion by pointing out that there have been no surprises to date under this process new to public education. The problem areas that we saw in Act 195 as it was enacted into law have, indeed, been the problem areas working under the law.

Before the enactment of Act 195 we said that if teachers and other public employes wanted to organize and bargain collectively for the benefits that should accrue to them because of their employment, they should have the right. We also supported legislation that would provide for such rights. We had some strong reservations, and grave concern, about several features of Act 195 as it was finally enacted.

It must be remembered that collective bargaining is a labor relations process, it is not a process for establishing or determining public policy regarding the quantity, quality, or general form of public services. Only those issues that relate to benefits of employes are appropriate issues to be dealt with through this process.

The framers of Act 195 recognized this full well when they placed into the Act Section 702 that essentially prevents public employers from being forced to bargain over issues of public policy, and Section 703 that prevents both employer and employe union from contravening statutory enactments of the General Assembly and provisions of home rule charters.

Public employers are required, however, to "meet and discuss" with employe representatives, upon request, on policy matters that affect "wages, hours and terms and conditions of employment as well as the impact thereon." "Meet and discuss" is defined in Section 301 (17) of the Act as "the obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employes: Provided, That any decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues raised." Thus, both policy matters and their impact that relate to "wages, hours and terms and conditions of employment" are subject to the "meet and discuss" process of the law.

If one recognizes that this bargaining process **is a labor relations process and not a policy making process except as it relates to benefits of employes,** then the design of Act 195 and its conditions in Section 702, Section 703, and Section 301 (17) are much more understandable.

Now, let's look at some of the experience, and problem areas that developed under Pennsylvania law.

Pennsylvania is one of three or four states that permit strikes by public employes. Under the so-called "limited right to strike" provisions of Section X of Act 195 it was expected by the framers of the law that strike would be a last resort, utilized only after the full range of impasse resolution procedures had been exhausted as specified in the law in sections 801, 802 and 803.

At the time of the enactment of Act 195 there were those who suggested — seriously and sincerely, I would guess — that permitting strikes under stipulated conditions would tend to reduce, rather than increase, the number of strikes. Anyone who really understood such issues did not concur in this point of view. The more than four years' experience, where Pennsylvania has had 205 public school strikes during this period, is ample evidence that legalizing strikes encourages strikes. During this period, Pennsylvania has had almost as many strikes as the rest of the nation combined. Contrast that experience with that in neighboring New York state where strikes are prohibited and where penalties are certain: during this same period New York has had a relative handful of strikes.

Based on this experience, one must really question whether or not public employe strikes can be tolerated in an open society such as exists in the United States. It must be remembered that the U. S. Supreme Court, in its 1971 decision dealing with the United Federation of Postal Clerks,(1) said: "Given the fact that there is no Constitutional right to strike (in either private or public employment), it is not irrational or arbitrary for the Government to condition employment on a promise not to withhold labor collectively, and to prohibit strikes by those in public employment - ". In any event, it is apparent that some corrective action is indicated in Pennsylvania.

One of the factors that has contributed to this strike incidence is the fact that the administration of the law by the Pennsylvania Labor Relations Board (PLRB) has left the matter of fact finding an unresolved issue in too many cases, thus probably leading to too many precipitous strikes. Both the mediation process and the fact finding process should be fully utilized and exhausted before going to the presumed last resort of a strike. In too many instances, strike has become a first, or nearly first, resort rather than a last resort.

Despite the provisions of Section 702 and 703 of the law, it was not unexpected that employe organizations would attempt to unduly and improperly expand the scope of bargaining under the Act to include matters of public policy. Although the **State College**(2) case is the notable example of this, there have been a number of other cases, including **Ringgold**[3]; **Teamster vs. Penn State**[4]; **Nazareth**[5];

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1. **United Federation of Postal Clerks vs. Winton M. Blount, U. S. Postmaster General**, U. S. Supreme Court.
2. **State College Education Association vs. Pennsylvania Labor Relations Board and Pennsylvania Labor Relations Board vs. State College Area School District, the Board of School Directors**, Commonwealth Court No. 1172 C.D. 1972.
3. **Charles E. Masters vs. The Board of School Directors of the Ringgold School District**, Court of Common Pleas, Washington County 1971.
4. **Pennsylvania Labor Relations Board vs. Teamsters Local Union No. 8 and the Pennsylvania State University**, PERA-C- 1075-C.
5. **Pennsylvania Labor Relations Board vs. Nazareth Area Education Association**, PERA-C-1884-C.

Northern Cambria[6]; and **Bristol Township**[7].

Ultimately, strikes over such issues must be dealt with in a more forthright manner than has been the pattern to this point in time. Otherwise, public services, and the public's right to those governmental services that have been determined should be provided, will become so abused and so constrained as to seriously threaten the proper functioning of representative government. In the long run, this will work to the disadvantage of public employe unions as well as to the general public and their public officials, both elected and appointed.

In 1970 it seemed pretty apparent that public employes in general, and educational employes in particular, didn't really understand and fully comprehend the nature of the process for which they had opted under Act 195. Thus, it took a couple of years before the leadership of such groups would — or could — admit that this process, by its very nature, was an adversarial process. Although such leadership now frankly admits to this, many employes still do not understand this. Also, public officials in some cases didn't, and still don't recognize this. Until there is complete understanding on this score, people have difficulty dealing with the process. Once the process is accepted for what is is — a labor relations' process that deals with **group** problems and concerns that the **group representatives** deem worthy of discussing and pursuing with the employer — then the normal functioning and direction of the **individual** within such a group can be expected by the respective supervisors of such individuals.

To some degree, out of this lack of understanding has come the somewhat uncertain attitude that exists among certain elements of the supervisory force of public employers, especially supervisors in the educational field. Some of this uncertainty also stems from the lack of understanding of Section 301 (6) of the Act that defines who is a supervisor and the combined effect of Section 301 (19) and 704 of the Act that deal with first-level supervisors. In any event, the court decisions in **Ellwood City**[8] and **Eastern Lancaster**[9] have left public employers and their supervisors with rather confused understandings of what responsibilities supervisors have to their public employers.

Supervisors, whether they be first-level or any other level, must represent the interests of the employer and the general public. The U. S. Supreme Court, in its recent decision **National Labor Relations Board vs. Bell Aerospace Company** that dealt with the National Labor Relations Act, said in that case:

> "Supervisors are management people. They have distinquished themselves in their work. They have demonstrated their ability to take

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6. **Benjamin H. Root vs. Northern Cambria School District,** Court of Common Pleas of Cambria County.
7. **Pennsylvania Labor Relations Boards vs. Bristol Township Education Association,** PERA-C-3160-E.
8. **Ellwood City Area School District vs. Secretary of Education and George R. Reese, Jr.,** Commonwealth Court.
9. **Pennsylvania Labor Relations Board and Eastern Lancaster County Education Association vs. Eastern Lancaster County School District,** Commonwealth Court.

care of themselves without depending upon the pressure of collective action. No one forced them to become supervisors. They abandoned the 'collective security' of the rank and file voluntarily, because they believed the opportunities thus opened to them to be more valuable to them than such 'security'. It seems wrong, and it is wrong, to subject people of this kind, who have demonstrated their initiative, their ambition and their ability to get ahead, to the leveling processes of seniority, uniformity and standardization that the Supreme Court recognizes as being fundamental principles of unionism."

Later in its decision on this case, the Court said:

"In sum, the Board's early decisions, the purpose and legislative history of the Taft-Hartley Act of 1947, the Board's subsequent and consistent construction of the Act for more than two decades, and the decisions of the courts of appeals, all point unmistakably to the conclusion that 'managerial employees' are not covered by the Act. We agree with the Court of Appeals below that the Board 'is not now free' to read a new and more restrictive meaning into the Act."

The relationship of public administrators to the mission of the public employer is critical to the general public interest. Therefore, it is equally critical that public employer supervisors be carefully and deliberately excluded from the bargaining unit of rank and file employes.

More recently this situation has been further aggravated by the introduction into the General Assembly of HB 2000[10] and SB 1756[11], both of which would worsen and further compound an already troubling problem.

As we look back upon the past more than four years' experience, and look ahead at how public sector collective bargaining can fulfill the purpose for which it was intended — a labor relations process in public employment, it appears that Act 195 is basically sound in its design. More adequate and effective administration by the agencies charged with such roles, including the courts, can help bring about the kind of balance of power that is so critically necessary if this kind of process is to work satisfactorily in the public sector. If this doesn' happen — if administrative practices can't be improved without legislative correction — then it would appear that in the public interest changes must be made in the law to [illegible] up the problems that have been identified.

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10. **HB 2000** — Would change the School Code to allow for bargaining rights under the School Code for principals and other supervisors in public education.

11. **SB 1756** — Would change the School Code to allow for bargaining rights for supervisors with binding arbitration.

COLLECTIVE NEGOTIATIONS AND THE TEACHER STATUS

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The remarkable thing about Act 195 as it has applied to school personnel who are our members, it not that there were some difficulties with it, or even that there have been some strikes, but that so many of our local teacher associations and their boards of school directors have been able to overcome growing-pain difficulties and arrive at acceptable contracts. For 1971-72, more than 400 such contracts were agreed to. For 1972-73, almost 500 contracts were successfully negotiated, and for 1973-74, the record was even better as far as results were concerned.

The whole process of bargaining in the school district requires an understanding of function and roles on both sides of the bargaining table. Boards of school directors and teacher representatives have had to learn how to use the law just as unions and employers in the private sector had to learn the process of bargaining in that period from 1936 to this day. It must be remembered that up until the time of the passage of the Act, school boards had traditionally been able to deal with teachers by unilateral decisions because no law required school board employers to deal with their personnel in any kind of democratic way. The point is that we have been learning. Now we need time to learn more about how to make Act 195 work even better.

It is not surprising that in our first experiences with the law there have been some difficulties. Act 195 set down rules for the process of bargaining in contrast to the real vacuum in personnel relationships which existed in our schools from time immemorial. Now both the employer and employe were required to speak, demands could be made, and under rules, set procedures were to be followed. Some school boards have still not learned that the table around which they talk to teachers has two sides.

Generally speaking, Act 195 has worked well and its provisions have been reasonably good. What is required now is only improvement in the use of the Act's provisions and perhaps some modifications which suggest themselves because of the experiences the parties have had with the Act.

It is practical that we identify from experience, and without emotion, the advantages and disadvantages of the law in its present form. Our approach to any such examination should be positive because our interest must be in the protection of the school operation and the improvement of public education. Every effort must be made to avoid the affects of negative arguments which are advanced by the self-interest of opponents of the Act. And we must avoid taking a step backward by returning to personnel conditions in the public schools which have been somewhat responsible for the lag there has been in making possible educational improvements for children.

Very frankly, the largest number of difficulties which have been experienced under the Act result from the attitude of school directors toward it. That attitude it typified by the official statement of Dr. Charles H. Wagoner of Weston, West Virginia, to the convention of The National School Boards Association in April, 1973. He said "There is no use opening the door even a crack" to the "evil" of teacher bargaining. Foolish as such a statement patently is in this day and age, it describes exactly the attitude toward Act 195 which has shown through the teachings of The Pennsylvania School Boards Association in its series of workshops on the law which were begun even before October 1970. Every effort was made, and continues to be made, to frustrate the purposes of the law which the General Assembly intended. But at the moment we will not dwell on that basic reason for the difficulties which have arisen. Instead, let us take a look at segments of the law which have given opportunity to its detractors for seeking to make it inoperative.

Even at the outset, a great many school boards unnecessarily set up blocks to circumvent the recognition of their teacher groups. Our local associations, in too many cases were required to go into elections or to make certification appeals to the PLRB. This happened in some places even where 100% of all of the members of a bargaining unit indicated they wished to be represented by one of our associations, and it happened even in cases where every one of the members of the unit was already a member of our Association. In spite of everything, many school boards insisted that an election be held with the predictable result, of course, that the PLRB had to recognize the teacher unit .

We do not say that technically there was anything wrong with such school board delaying tactics. What we do say is that the delays were unnecessary, obstructionist, and foolishly expensive. As a matter of fact, such school board attitudes eventually resulted in an almost total disregard for the law. A good example of that fact is the Littlestown School Board where there was a strike, the school board delayed recognition of the teacher group until last year and teachers there did not have a contract with the school board although their right to negotiate for one was recognized in law as early as October, 1970.

Another set of difficulties in the operation of the law resulted from the board's insistence on its interpretations of the meanings of sections 701 and 702 of the Act. Section 701 requires bargaining on salaries, wages, and other "terms and conditions of employment." The meaning of that term has caused serious controversy and is even now the subject of an appeal before the Supreme Court.

Many school boards have insisted on the narrowest interpretation of Section 701 and have attempted to limit negotiations to salaries and wages, only, saying that there are few "term and conditions of employment," other than wages, salaries, and a few others, which are subject to bargaining. Our position is that there are few school policies which do not affect the terms and conditions of a teacher's employment and that broadening the scope of bargaining will eventually result in better schools in the 1970's.

We believe that the logic of our conclusion is clear enough. We believe that the public interest can be served best if the teacher group is permitted the

broadest possible opportunity to be involved in the formation of school policy by the application at the bargaining table of their professional competence in the education of children.

Since no school policy adopted by a board of school directors can be justified except as it contributes to the more effective education of the young, or to the best interests of the public, it follows that the policymaking process should involve the teacher group. For it is in the teacher group that we find the deepest understanding of the child and his needs, and in which the effect of school policy on the child and the teacher is most constantly and meaningfully felt.

The bargaining process provides a formalized way of bringing to bear on policy construction the best and most informed thinking available to school boards in a wide range of school problems. Teacher involvement in policy formation is argued for by a combination of several conditions peculiar to his professional practice. Among them are the following:

— The teacher is a professional employe, not just a wage earner. The law defines him as such.

— He practices his profession under a form of licensure called certification which is mandated and regulated by the law.

— He qualifies for professional practice only after prolonged and specialized collegiate education, and in most cases voluntarily extends his education beyond the mandates. As a matter of fact, the law requires that the teacher who holds a baccalaureate degree must extend his education to almost the level of a master's degree.

— He serves clients who are pupils and is unremittingly responsible personally for their present and future welfare and growth by the exercise of professional knowledge and judgment.

— His practice requires the constant application of intellectual and practical judgments of a most critical nature.

— He understands much of how learning occurs, applies technical skills, measures the productivity of his teaching, and best knows what educational conditions must be present for the child's learning.

— His teaching qualifications are equal to, and often exceed, the qualifications of his supervisors and administrators and he is frequently far more practiced in the profession than are they. It goes without saying that the teacher is more familiar with the daily educational process and needs of children than are school boards, and this is not to say that we do not understand and respect school boards. The fact is that there are many areas in which school boards must make policy in which they have no knowledge at all.

— The teacher is, therefore, in the peculiar and unenviable position of being an expert under operating rules promulgated by a school board which often knows little about the process of education and almost nothing of its methods.

— He is constantly affected by policies good and bad on which he was not even consulted and which frequently inhibit or impede him in his teaching. Yet parents hold him responsible to a degree for the effects of all policies.

— He feels the bad effects of improvable policy daily, yet cannot really exert full effect on policy improvement because of the narrow range of meaning given to the bargaining process by administrations and school boards.

We believe that the foregoing facts maintain the teaching profession's contention that the public will be best served by the application of the teacher's total skills to the formation and adoption of school policy through a bargaining process which covers the widest possible range of negotiable interests.

Section 702, which refers to matters of "inherent managerial policy," and provides that such matters are not required to be bargained, has been too frequently used by school boards in attempts to emasculate the law by making it possible for them to refuse a broader area of proper bargaining to the bargaining table. In some cases, boards have filed unfair practice charges when our local associations have placed certain items on the table. The effect of the resistance raised by school boards against the broadening of the scope of bargaining has resulted in frustrations which become impasses and which in too many cases contribute to a strike temper in the teacher associations. What are matters of "inherent managerial policy?" We believe that it would be useful for the Act to more clearly define that term to better satisfy the peculiar conditions of the school operation and to avoid meanings of the term which are applicable only in the private sector.

For example, it should be clear that matters having to do with class size, materials, textbooks, school libraries, and clerical duties put on teachers, discipline policies, audio-visual equipment made available, grading policies, provisions made for guidance programs, and psychological services, are matters which so clearly affect the education of children and the performance of teachers, that they are naturally subjects of arrangments which should be made bilaterally between school boards and professionals. They are not simply matters which may be decided by so-called "management" and if they are allowed to remain that, teachers will always find it difficult to bring about improvement in their teaching which they already know could be made.

In spite of the effort of many school boards to limit the scope of bargaining within the narrowest possible lines, it is encouraging to note that numerous school districts have sensibly admitted to bargaining items which other school districts insist are "managerial." The contracts in the Moon schools, Benton area, Kane, and Gateway are good examples of forward-looking attitudes. Our experience has been that in those school districts which are well-managed, in which boards maintain a truly practical view of their role, and in which there is a decent attitude toward personnel, we have had few difficulties with the interpretations given to the allowable scope of bargaining.

All of this suggests that rather than making an attempt to limit bargaining, the General Assembly might better clarify the meanings of the terms used in Sections 701 and 702.

If this were done the process of bargaining which was intended in Act 195 would come closer to the ideal that all policy conditions should be negotiated which affect the teacher's professional practice and the educational welfare of the children who are being taught.

The General Assembly, in its wisdom, provided the means for resolving impasses which are inevitable in the process of negotiations. In general, we believe that not only was the legislative intent good, but that the provisions for impasse resolution are reasonably sound. For example, the process of mediation is provided for under the law. And that provision is a good one. We recognize its virtue and at the same time, suggest reasonable improvements.

It would probably be wise to change the time sequence within which the process of mediation operates. It is probably not reasonable to specify that the condition of mediation begins to exist 20 days after bargaining has opened. We would suggest that mediation come into play no sooner than 30 days after bargaining has opened. Providing for a condition of mediation only 20 days after bargaining has opened is not quite realistic and possibly encourages a feeling that impasses have been reached.

A second difficulty with the mediation provision is actually not a fault of the Act itself. It simply arises from the fact that when Act 195 went into effect, no adequate provision was made for anticipating the inevitability that tremendous new demands would be made on the Bureau of Mediation. The result has been that that government bureau is not staffed adequately. There are just not enough mediators to do the job. We find in far too many cases that the process of mediation is delayed only because no mediator is available to a teacher group and school board which could use his services. When this is the case, we find that in the period of the mediator's absence, tempers tend to become frayed and difficulties are magnified. In other instances in which mediation has begun, the visitations of the mediator must be suspended because he has been called into other school districts. There follows, then, a suspension of what could have been a successful effort to resolve impasse. Our suggestion would be that if the staff of the Bureau of Mediation were to be enlarged, the process of mediation could result in a greater number of satisfactory agreements for the resolution of impasse. Perhaps a doubling of that mediation staff through the addition of permanently employed mediators, or part-time mediators, would not be unreasonable.

We have been finding that where the parties enter mediation with an understanding of the process and a willingness to use it for its practical values, the chances for success are good. Where either of the parties goes to mediation distrusting the process or resenting it, the chances for success are lessened. Unfortunately, we have found that too many school boards resent the "intrusion" of a mediator. They consider this to be the intervention of an outsider and they confuse mediation with arbitration, believing that an outsider's decision will be imposed on them.

It is our belief that if mediators were more immediately available for service in local impasse situations, the whole bargaining process would be speeded up and occur much more smoothly.

Act 195 provides for the use of fact-finding for resolving impasses. Our experience is that fact-finding probably has made agreement possible in about 45% of the cases in which it has been used, if only because the fact-finder's report frequently encourages the parties to get back to the table for further negotiations under a more positive kind of pressure to reach agreement. In short, the position of the association is that fact-finding, while it does not guarantee the avoidance of serious impasse, is valuable enough as an aid to reaching agreement that it should be retained in the law.

There is another provision of Act 195 which has allowed school boards to impede the good operation of the Act. That provision is for the identification of the bargaining unit. School boards in far too many cases attempt to restrict the bargaining unit to as small a number as possible by excluding personnel they claim are members of the "management team." By doing this they have set up a divisive force in school operations and have created artificial barriers between personnel who are said to supervise of administer and personnel who teach. We believe that the General Assembly's intent was to recognize the right of principals and other categories of assignment in our school staffs to engage in meaningful negotiations with their school boards.

The truth is that school boards attempt to exclude from bargaining as many professional employes as possible. They have fought inclusion of guidance counsellors, department heads, school nurses, subject matter supervisors, psychologists, assistant principals and principals, so-called head teachers, and, indeed, so many other, that if they were to succeed, there would be hardly any members left in the bargaining units. The school board claim that such personnel "manage" is in most cases ridiculous. In hardly any instances are they even remotely involved in bargaining for the district. They do not **effectively** hire or fire. Our schools would be better served if we did not have this obstructionist school board attitude intruded into the operation of Act 195.

Our Association wishes to advise you of the statement of belief and attitude of its Department of Administration and Supervision on this point of bargaining unit make-up. It is found in our Resolution 73-13 adopted by our House of Delegates. It suggests that amendments to the Act are necessary to "give all professional personnel, other than the chief educational administrator and other commissioned officers, but specifically including all other administrators, supervisors, and special service personnel, the right of collective negotiations with the board of school directors or trustees in bargaining units whose inclusiveness is determined by the total professional staff involved . . . . "

As it developed, the original wording of Act 195, the General Assembly naturally had to designate instrumentalities of the government of the Commonwealth in which would reside certain powers of administration, supervision, and enforcement of the Act. Among these agencies, the PLRB was designated as the agency which would, in effect, supervise the operation of the law as it affects public employes.

Let it be clearly understood that we fully appreciate the difficulty of the task assigned to the PLRB and have only respect for the personnel who have been

given the difficult job of dealing with the actual operation of the Act. However, experience indicates to us that the PLRB is dealing with bargaining in the public sector without making any great distinctions between such a condition of employment and conditions in the private sector. We can easily understand how this has happened. and we can understand how PLRB operations and decisions have been influenced by the NLRB.

We do believe, however, that collective bargaining for professional employes in school districts is very different in important ways than collective bargaining in the private sector. The same definitions do not apply in the public sector as in the private sector. For example, collective bargaining for teachers involves professionally prepared personnel who are competent to make judgments and decisions about the conditions of their service and the way in which they perform professionally.

You will recall that I opened our statement to this symposium with the recognition that Act 195 has been surprisingly successful. You do not need to be told that there were strikes before the law was enacted and the reason for the strikes there have been before and since the law is a simple one. Teachers had just gotten to the point where they no longer could perform professionally or with any dignity under the conditions which had traditionally existed for teachers in public education. Simply put, Act 195 did not engender strikes. Strikes were present to show the inadequacies of school operation even before the General Assembly wisely included the right to strike among the provisions made in Act 195.

The Pennsylvania School Board Association has repeatedly stated that "in most cases strikes have been illegal and a poor example for children." Surely the PSBA knows that such a statement is not true. In no single instance has a court decided that any of the strikes which have occurred was illegal. In each case, all of the necessary steps required to be taken in the Act had been taken before any work stoppage was called.

Mediation was used insofar as school boards permitted it to be useful. Fact-finding was submitted to by our local associations when fact-finding was ordered by the PLRB. And it should be pointed out that that agency is the only agency which could require fact-finding. There is no single example of illegal striking by a local association of ours which has been recognized as such by judicial determination.

It has also been claimed by some that strikes by teachers are a poor example for children. When schools do not answer the needs of children because of bad school policies, or poor public support, the teacher is duty-bound to take actions which require the attention of the public to school conditions. When a professional cannot teach as well as he knows how to teach, cannot discipline youth because a school board which may be politically motivated, does not allow the exercise of professional judgment, the public suffers.

When, for whatever reason, we continue to demand professional performance by teachers, while we forever deny to them economic competency of professional

dignity, the professional teacher has no choice but to exercise his legal right to withdraw services. To do less than that would indeed be unprofessional because it would allow the indefinite continuation of school programs and school conditions for which the public is made to suffer through its children.

Let us give some attention to the too-often-repeated claims of the PSBA and a very few others that Act 195 has given the teachers some kind of overpowering edge at the bargaining table. Let's look at the charge that the children have lost an unmeasured number of pupil instructional hours in the classroom because of the militancy of the teachers when they strike. Let us look on the claim that the PSBA makes that Act 195 has seriously affected the taxpayer's pocketbook. I would suggest that we spend little time on these allegations because none of them have merit in fact. The regrettable thing about it is that the PSBA knows there is no virtue in their arguments, but that it still advances them. One has to doubt where the true interest in public education lies.

You will learn from supported facts of history that strikes were nothing new at the time of the enactment of Act 195, and you will be led to the conclusion that the reasons for teacher discontent existed before the enactment of that excellent law and that they have not been completely removed. Act 195 was a people law, it understood that teachers are people, and that teachers do not exist in 1974 without the same urges, the same needs, the same requirements, as do all human beings. The fact is, our findings show there were strikes before the Act, and whatever happens, there will be strikes under the law. The point is that each of us is required to perform better under the law, and because of the law, than before we had Act 195.

Fact-finding has had a positive influence in the resolution of impasse. Not perfect, it still provides one more means by which the contending parties may be moved to seek agreement with each other. It ougth to stay as a valuable part of this legislation.

Exact information about the strikes which were conducted in Pennsylvania before and since the enactment of Act 195 is vital to all concerned about this statute. It is important to note that the facts which are shown come out of the actual salary earnings and loss record of teachers who were affected, and not out of the specious claim of PSBA that many pupils have suffered irreparable harm because they lost the opportunity to be instructed on account of teacher strikes. The PSBA already knows this. The actual figures should demonstrate our stated fact to you.

Now we must come to a consideration of the claim that legalized bargaining for teachers resulted in massive increase in the number of dollars taxpayers must pay for the support of the school. Studies which deal with the effect of tax structure on the millage collectible in the school districts affected by strikes demonstrate that no such claim of school boards is supported by fact.

There has been no insupportable increase in the costs of schools resulting from collective bargaining. The people have not been impoverished. There has been very little increase in school costs that would be noticeable to most Pennsylvania

taxpayers in school districts where they are already doing a good job of supporting their schools. The fact that school districts did not manage their local school district finances to satisfy the requirements of Act 88 does not allow school boards to foist the blame for tax increases on Act 195. Rather, it points up their refusal to plan wisely and finance according to their educational needs.

Finally, we come to a rather sorry part of the story. There are school districts in Pennsylvania which think they have found a way to emasculate your good law, Act 195. Specifically, and only as examples of a spreading method, the Northern Cambria School District, and others believe they can perform the surgical act of emasculation of the law. In the face of the requirement that they must bargain with their teachers, they simply suspend school operations, and the school program where they please, allow the children to suffer by cutting the program, and cut the income of teachers, by simply declaring the end of the school year.

PSEA charges that no public agent called a school board should be permitted to deny to boys and girls the opportunity to 180 days of instruction which the law requires simply in the effort to "beat the teachers."

PSEA would suggest an examination of Act 195 which would require school boards to respect the law, to obey it, and to guarantee the modest legal requirement set down in that children have a minimun of 180 days of instruction. The members of our local associations who voted to strike are willing to give those days. They do not ask or want payment for any days on which they have not taught. All that we ask is that politically motivated school boards not be allowed to make meaningless the best collective bargaining Act for teachers, for children, and for the public, which can be found anywhere in the United States.

If you are searching for ways to improve the Act, search for ways to make boards of school directors responsive to the law and responsible to the people for their failure to provide useful school programs for the children and decent professional practice for our teachers.

IN SUMMARY:

1. We should give attention to removing the opportunity boards have for delaying the recognition of local associations which will negotiate for teachers.

2. We might strengthen the Bureau of Mediation in personnel and in the time requirement which boards must hold to in requesting its services.

3. We should retain the requirement for fact-finding under the direction of PLRB.

4. We must give to the Department of Education greater power in requiring the accomplishment of the 180 day year.

5. We should broaden by specification the scope of bargaining.

6. We should broaden the membership in bargaining units by the inclusion of professional personnel which school boards have attempted to exclude.

7. We must take from the local school boards their power to emasculate the law by simply suspending school programs as an instrument in winning their bargaining points.

SYMPOSIUM PROCEEDINGS

Published by the Graduate Program in Industrial Relations
Saint Francis College, Loretto, Pa.

Industrial Relations Symposium, 1968

Search for Industrial Peace — At Home and Abroad, 1969

The New Era of Collective Bargaining For Public Employees, 1970

Industrial Safety and Health — Problems and Prospects, 1971

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Available from:

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SAINT FRANCIS COLLEGE
LORETTO, PA. 15940

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